IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.3684 OF 2003

Kiritkumar B. Vasave,
Adult, Occ: Service,
residing at Wada, Taluka
Wada, Dist: Thane. .... Petitioner

- Versus -

1. Shikshak Sanchalit Shikshan
Sanstha through its
Secretary, At & Post Wada,
Taluka Wada, Dist: Thane.

2. Head Master,
Swami Vivekanand Vidyamandir,
At & Post Wada,
Dist: Thane.

3. Education Officer (Secondary)
Zilla Parishad, Thane.

4. Balabhau Janardan Shinde,
Adult, Occ: Service,
residing at Pik Colony,
Y.D. Patil Chawl, Wada,
Taluka Wada, Dist: Thane.

5. The Presiding Officer,
Additional School Tribunal,
New Mumbai. .... Respondents

Shri S.G. Deshmukh for the Petitioner.

Shri N.V. Bandiwadekar for the Respondent
No.4.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: NOVEMBER 30, 2006

ORAL JUDGMENT:

1. Heard the Advocate for the petitioner and the respondent No.4. None present for the other

respondents, though served. In fact, the notice was issued for final disposal of the matter at the admission stage itself. Since the other respondents have not appeared inspite of intimation about the hearing being fixed for final disposal of the matter, evidently they are not interested in the outcome of the petition.

2. The petitioner challenges the judgment and order dated 8-5-2003 passed by the School Tribunal, New Mumbai in Appeal No.44 of 2001 on the ground that inspite of specific ground regarding failure on the part of the management to adhere to the provisions of Rule 27(e) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, hereinafter referred to as "the said Rules" in the matter of termination of services of the appellant, the Tribunal has failed to consider the same and has disposed of the appeal merely by referring to the provisions of Rule 27(a) of the said Rules to justify the decision of the management in that regard.

3. It has been strenuously argued on behalf of the petitioner that the petitioner in his memo of appeal had specifically raised the ground regarding non-compliance of the provisions of Rule 27(e) of the said Rules by the management while directing retrenchment of the petitioner and further that the same was canvassed before the School Tribunal in the course of the

arguments, yet the Tribunal totally failed to consider the same while dismissing the appeal filed by the petitioner against the termination of his services. On the other hand, it is sought to be contended on behalf of the respondent No.4 that though the said ground was raised in the memo of the appeal, it was not seriously canvassed before the School Tribunal.

4. The contention on behalf of the respondent No.4 that the petitioner had not seriously canvassed the said ground before the Tribunal does not appear to be correct. In fact, the impugned judgment does refer to the contention on behalf of the respondent No.4 himself to the effect that the petitioner had wrongly raised the issue on the basis of the provisions of Rule 27(e) of the said Rules. The said contention on behalf of the respondent No.4, reproduced in the impugned order, discloses that the petitioner had, in fact, canvassed the said contention before the School Tribunal. If the said ground was not canvassed by the petitioner before the School Tribunal, the respondent No.4 would have no occasion to raise the said defence. However, at the same time, it cannot be said that the School Tribunal has failed to consider the said issue while deciding the matter.

5. The impugned order apparently discloses the

reproduction of Rule 27 including the Clause (e) thereof and further ruling to the effect that the termination of services of the petitioner had been in terms of the provisions comprised under Rule 27(a) of the said Rules.

6. As rightly pointed out by the learned Advocate for the respondent No.4, it is pertinent to note that the petitioner as well as the respondent No.4 belong to and were appointed as the reserved category candidates. It cannot be disputed that Rule 27(e) of the said Rules provides that in cases where the backlog is not cleared by the institution by appointing the necessary number of reserved category candidates, while ordering retrenchment on account of fall in the number of pupils and on that count there being surplus teachers, the reserved category candidate cannot be retrenched merely on the ground that he or she is junior to the open category candidate and the said rule needs to be observed in letter and spirit. However, when a person belonging to the reserved category seeks to raise the dispute about violation of Rule 27(e) of the said Rules, he has to point out and name the candidate belonging to the open category who could have been retrenched by following the provisions of law comprised under the said Rule and for that purpose to join such candidate as the party to the proceedings before the School Tribunal in the appeal filed by such reserved category candidate in

that regard.

7. In the case in hand, the memo of the appeal filed by the petitioner raising the issue about non-compliance of the provisions of Rule 27(e) did disclose that the petitioner had contended that the strength of the backward class teachers in the school in question did not exceed the percentage of the reservation prescribed under the sub-rule (7) of Rule 9 of the said Rules. However, no further details in that regard were stated or disclosed in the memo of the appeal. Who was the candidate from open category who could have been declared surplus in place of the petitioner? To what extent the backlog of reserved category candidate had remained to be cleared? No details in that regard were disclosed by the petitioner. The impugned order also does not disclose any such details having been made known to the School Tribunal in the course of the hearing of the matter. The learned Advocate for the petitioner has fairly conceded that the records do not disclose any such fact having been brought to the notice of the School Tribunal at any point of time in the course of the hearing of the matter before the School Tribunal. Obviously therefore, there was no factual data available before the School Tribunal to arrive at the finding about failure on the part of the management to comply with the provisions of law under Rule 27(e) of

the said Rules.

8. Any submission about non-compliance of the provisions of Rule 27(e) has to be based on the factual matrix disclosing violation of such rule by the management. It is not the mere submission in that regard that would justify interference of the Appellate Court in the order of the management issued under Rule 27(a) of the said Rules. Once it is clear that the petitioner had not disclosed any fact which could reveal violation of the provisions of Rule 27(e) by the management while ordering the termination of services of the petitioner, no fault can be found with the impugned order of the School Tribunal giving no much credence to the contention raised in that regard by the petitioner. Viewed from this angle, therefore, it cannot be said that the Tribunal has either failed to exercise its jurisdiction in the matter in the manner it was required to be exercised, or has acted illegally or there has been any jurisdictional error on the part of the School Tribunal which could warrant interference by this Court in the impugned order in exercise of its jurisdiction under Article 227 of the Constitution.

9. As no other point is sought to be canvassed in the matter, there is no case for interference. Hence the petition is dismissed.

10. At this stage, the learned Advocate for the petitioner prays for continuation of the status quo which was ordered at the time of issuance of notice in the matter. Request granted. The status quo to continue for a period of eight weeks.

(R.M.S. Khandeparkar, J.)

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